IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.296 OF 2006

Subhash Ranchoddas Agrawal ...Petitioner
Vs.
Mr. J.K. Hargude & Ors. ...Respondents

Mr. Nitin Pradhan for the Petitioner
Mr.Raja Thakare, Sp. Counsel with Mrs. U.V.Kejriwal, A.P.P for the Respondent No.1.
Mr. P.R. Dave for Respondent No.7

CORAM: SHRI J.N.PATEL &
SMT. ROSHAN DALVI, JJ.
DATED: 31ST AUGUST, 2006

P.C.

1. Heard.

2. The Petition has invoked the ordinary jurisdiction of this Court seeking writ of mandamus to quash the proceedings against the Petitioner relating to charge-sheet filed in Crime No.06 of 2004 registered at DCB, CID, Unit-II (Malabar Hill Police Station) by the FIR dated 23rd August, 2003 in the Court of the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplanade at Mumbai,

which has now been committed to the Court of Sessions, Greater Mumbai. The Petitioner also seeks a declaration to the effect that the entire investigation carried out against the Petitioner in the said case is illegal, null and void and be quashed and set aside and interim relief of the nature as prayed in prayer clause (c) and (d).

3. The case relates to commission of murder of Dr. Asha Goel who was the resident of Canada and sister of the Petitioner and one Suresh Ranchhoddas Agrawal at whose instance FIR bearing No.93 of 2003 came to be registered on 23rd August, 2003 by Malabar Hill Police Station for offence under Sections 302, 397, 452, 34, 120(B) of the Indian Penal Code. The incident had occurred in the flat of the complainant/informant i.e. Suresh Ranchhoddas Agrawal (one of the accused who has died during the pendency of the case) i.e. Flat No.14-B, 14th floor, Sudhadkar Building, N.D. Dabholkar Road, Malbar Hill, Mumbai. The very complaint which was lodged by the deceased Suresh Ranchhoddas Agrawal was that some unknown persons in order to commit theft entered into his house between 21.30 hours of 22nd August, 2003 and 6.30a.m. Of 23rd August, 2003 and entered the guest room where the deceased Asha Goel was staying and committed her murder and took away the property worth Rs. 1,21,000/- including her diamond ring,

pearl necklace set, mobile phone and cash.

4. On the basis of this complaint Malbar Hill Police registered the aforesaid crime and the investigation was being carried out by Malbar Hill Police Station. As this was a case of robbery and murder parallel investigation in the matter was also being conducted by the Senior Inspector, DCB, CID, Unit-II and subsequently the investigation was taken over by DCB, CID, Unit-II and on conclusion of the investigation charge-sheet came to be filed against the complainant and other co-accused in the case for the said offence.

5. The learned Magistrate in whose Court charge-sheet was filed committed the case to the Court of Sessions.

6. During the investigation and before filing of the charge-sheet the Petitioner did visited Mumbai, India from Canada where he is presently residing and was also interrogated and left Mumbai, India before the charge-sheet could be filed.

7. After charge-sheet was filed by the Investigating Officer under Section 173(2) of Cr.P.C., further information, fresh clues regarding complicity of Petitioner came to be gathered, therefore the I.O sought permission of the learned Magistrate

to carry out further investigation in the matter and it is pursuant to this further investigation that they have been able to collect certain fresh material which primafacie makes out complicity of the suspect in the crime. In the charge-sheet which was filed, the Petitioner was shown as a wanted accused.

8. The learned Counsel for the Petitioner submits that after the charge-sheet which is filed before the Magistrate now as the case stands committed to the Court of Sessions for trial, there is not an iota of evidence to show the complicity of the Petitioner and therefore, he seeks quashing of the proceedings, so far as he is concerned as an accused to put it in other words the Petitioner seeks discharge in the matter.

9. The foundation of the power of the police under Section 173 (8) Cr.P.C being the discovery of fresh facts, it permits for repeated investigations being made on the discovery of fresh facts on each occasion (Ramlal Vs. State, AIR 1979 SC 1791)

10. An application under Article 226 of the Constitution may lie to quash a direction or proceeding for further investigation under Section 173 (8) in exceptional cases for

want of jurisdiction or malafide; but in interfering with a proceeding for investigation or further investigation, the Court should bear in mind that investigation of an offence and the collection of evidence is exclusively reserved for the police and that it is subject to the superintendence of the State Government – the executive which is responsible for the prevention of crime and maintenance of law (State of Bihar Vs. Saldanna 1980) Cr.L.J. 98 (SC).

11. Therefore, in our view there is no legal impediment in the way of the investigating agency to carry out further investigation and collect additional/fresh material against the accused persons if it is detected even subsequent to filing of the charge-sheet and therefore, the relief sought for by the Petitioner from this Court to quash the offences registered against him and the charge-sheet filed against him showing him in the coloumn of 'Wanted" accused, unless the investigating agency is given a free hand to conclude further investigation even after filing charge-sheet, cannot be granted.

12. In our opinion the Petition filed by the wanted accused is pre-mature and if at all he wanted to seek discharge he could have applied to the trial Court by submitting himself to its jurisdiction as he is shown as a wanted accused in the

case, but the Petitioner has chosen to approach this Court by invoking its extra ordinary jurisdiction.

13. We have gone through the fresh facts and material which has been collected by the investigating agency on perusing the case-diary and we are satisfied that there is a primafacie case relating to the complicity of the Petitioner and unless the Petitioner is available for custodial interrogation it will deprive the investigating agency of carrying out and concluding the further investigation under taken by them.

14. Mr. Nitin Pradhan, the learned Counsel appearing for the Petitioner submitted that the Petitioner is disabled due to illness and cannot move out of Canada and he is ready to co-operate with the investigating agency by making himself available at Canada under medical supervision. The investigating agency has made efforts in the said direction but they have not received any response therefore, it will be in the interest of the Petitioner that he himself surrenders before the investigating agency and make himself available for the purpose of investigation subject to the rights available to him under the law as an accused. The investigating agency can proceed further with the investigation.

15. With these observations and directions we dismiss the Petition. All interim orders stand vacated. Rule discharged.

(SMT.ROSHAN DALVI, J.) **(SHRI. J.N. PATEL, J.)**